REMARKS

This communication is a full and timely response to the non-final Office Action dated March 6, 2009. Claims 1-46 remain pending. By this communication, claims 1, 21, and 31 are amended. Support for the amended subject matter can be found, for example, in paragraphs [0030] and [0061] of the corresponding published application.

Beginning on page 2 of the Office Action, claims 1-10, 15, 16, 31-33, 44, and 45 stand rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Schroeder et al.* (U.S. Patent Pub. No. 2003/0130883) and further in view of *Failing, Jr. et al.* (U.S. Patent No. 5,448,226). Applicant respectfully traverses this rejection.

As discussed in a previous response, Figures 1-10 describe a system in which a retailer and manufacturer contribute information to a promotion and price computation model that calculates a retail price according to a sales contract. The main factor contributes promotion information, generally in the form of a manufacturer "buy down" or "discount," and the retailer contributes price determination parameters. The promotion and price computation model calculates a retail price based on the aforementioned data. Promotion and price computation model implements a contractual promotional agreement between the retailer and the manufacturer based on the calculation. To monitor whether a retailer violates the promotional agreement, a control violation flag can be set by the system and later detected by the manufacturer during an audit of the retailers records in the system.

Applicant's independent claims broadly encompass the foregoing features. For example, representative claim 1 recites the following:

> A method of providing model-based promotion and price computation, comprising the steps of:

> a manufacturer providing promotion information to be considered in developing the promotion and price computation model;
>
> a retailer providing price determination parameters to develop the promotion and price computation model;
>
> developing the promotion and price computation model from the promotion information provided by the manufacturer and the price determination parameters provided by the retailer to implement a promotion, wherein the promotion and price computation model establish an agreement between the manufacturer and the retailer; and
>
> auditing of improperly implemented promotions based on the agreement.

The combination of *Schroeder* and *Failing* do not establish a *prima facie* case of obviousness as alleged.

Schroeder discloses a method and system that predicts the profit attributable to a proposed sales promotion of a product. This system is a business planner that permits a retailer or remote sales staff member to experiment with a variety of promotional scenarios to determine the benefits of alternate promotions. The proposed promotions are entered into a computer program that runs a model based on a prediction of increased sales to determine a set of promotion conditions. The system uses historical databases of sales for a variety of promotion conditions and predicts how planned promotions will affect sales in a particular store.

Failing discloses a system having a central store computer and multiple ESL-mounted shelf talkers, which are signs, cards or other printed material placed at the shelf location. The system includes sensors to detect the presence of shelf talkers. An audit is performed to determine which products are on promotion, the start and end dates of the promotion, and the current status of whether or not shelf talkers are installed.

Both *Schroeder* and *Failing* however, do not disclose that an implemented promotion and price computation model establishes an agreement between the

manufacturer and the retailer and that auditing of improperly implemented promotions is based on the established agreement as recited in Applicant's claims. Rather, *Schroeder* is used as a prediction or planning tool for gauging the success of a proposed promotion. There is no discussion or suggestion that the proposed promotion establishes an agreement between the supplier/manufacturer and the retailer. Moreover, while *Schroeder* discloses that future auditing can be performed by an administrator, there is no suggestion that the auditing is based on an agreement established by a promotion and price computation model, or any other agreement for that matter, as recited in Applicant's claims. *Failing*, on the other hand, performs an audit to determine if the correct products are on promotion but not whether a promotion is improperly implemented. That is, if during an audit it is determined that a product that should be on promotion is not on promotion, it follows that the promotion is improperly implemented. Based on Applicant's claim language, only improperly promotions are deemed improper.

In summary, *Schroeder* and *Failing* when applied individually or in combination fails to disclose or suggest every feature recited in Applicant's claims. For at least this reason, a *prima facie* case of obviousness has not been established.

The Office is reminded that the Office has the initial burden of establishing a **factual basis** to support the legal conclusion of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). For rejections under 35 U.S.C. § 103(a) based upon a combination of prior art elements, in KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007), the Supreme Court stated that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the

prior art." "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some **articulated reasoning with some rational underpinning** to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (emphasis added). For at least the foregoing reasons, withdrawal of this rejection is respectfully requested.

In numbered paragraphs 4-7 the Examiner variously rejected Applicant's claims for alleged unpatentability. In particular, on page 6 of the Office Action, claims 21-25 stand rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Teicher et al.* (U.S. Patent No. 5,933,813) and further in view of *Failing*; on page 8 of the Office Action, claims 11-14 and 34-39 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Schroeder* in view of *Failing*, and further in view of *Teicher*; on page 11 of the Office Action, claims 17-20 and 40-43 are rejected under 35 U.S.C. §103 for alleged unpatentability over *Schroeder* in view of *Failing*, and further in view of *Kanojia et al.* (U.S. Patent No. 6,845,396); and on page 11 of the Office Action, claims 26-30 stand rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Teicher* in view of *Failing*, and further in view of *Kanojia*. Applicant respectfully traverses these rejections.

While not acquiescing to the alleged teachings of *Teicher* and *Kanojia*, Applicant respectfully submits that these references when applied individually or collectively with *Schroeder* and *Failing* do not disclose every feature and/or the combination of features recited in Applicant's claims. Namely, the combination falls short of describing a promotion and price computation model that establishes an agreement between a manufacturer and a retailer, and auditing improperly

implemented promotions based on the agreement, as recited in Applicant's claims. Upon careful review of the cited references, Applicant could find no evidence or support for an agreement that is established based on a promotion and price computation model as recited in Applicant's claims. For these reasons, withdrawal of these rejections is respectfully requested.

CONCLUSION

Based on the foregoing amendments and remarks, Applicant respectfully submits that claims 1-46 are allowable and this application is in condition for allowance. In the event any issues remain, the Examiner is encouraged to contact Applicant's representative identified below.

Respectfully submitted,

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